IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9686 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VARU JUBIN PRAVINBHAI MINOR THRO HIS FATHER

Versus

DIRECTOR,TRIBLE WELFARE DEPARTMENT

Appearance:

1. Special Civil Application No. 9686 of 2004

MR CL SONI for Petitioner No. 1

MR L B DABHI AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 22/12/2004

ORAL JUDGEMENT

1. The petitioner herein has preferred this petition in order to quash and set aside the order dated 02/08/2004 passed by respondent no.1 herein, at Annexure-J to the petition, whereby the petitioner was not regarded to be belonging to the "Hindu Salat" Caste which falls in the Socially and Educationally Backward Class category (for short, "S.E.B.C." category).

2. The petitioner was admitted in respondent no.2 College in the First Year of M.B.B.S. Course. By letter dated 03/07/2004, the petitioner was informed that he was provisionally admitted in the First Year of M.B.B.S. Course in the category of S.E.B.C.. The case of the petitioner is that he belongs to the "Hindu Salat" Caste which falls in the S.E.B.C. category. By another letter, respondent no.1 informed the petitioner that the Certificate produced by the petitioner showing him as belonging to the "Hindu Salat" Caste was found to be suspicious on scrutiny by the Primary Scrutiny Committee of the respondent authority.

3. Respondent no.1 herein, after examining the documents on record, came to the conclusion that the petitioner cannot be treated to be belonging to "Hindu Salat" Caste, and therefore, held that the Certificate issued by the Deputy Mamlatdar, Anjar, dated 26/06/2002 was issued mechanically and hence the petitioner could not be considered to be belonging to the S.E.B.C. category. Hence, this petition.

4. Mr.C L Soni learned advocate for the petitioner has contended that after the impugned order was passed, the petitioner got some more documents to support his claim that he belongs to the "Hindu Salat" caste. He has, therefore, contented that on the basis of the subsequent documents that have been procured by the petitioner, the matter is required to be reconsidered by the respondent authority. Hence, he has requested that the matter may be remanded to the respondent authority for decision in the matter afresh.

5. I have heard learned counsel for the parties and have perused the relevant documents on record. Without entering into the merits of the matter and without examining the impugned order, this Court is of the opinion that the matter can be remanded to the respondent authority for decision afresh, in view of the fact that the petitioner has procured documents subsequently to support his claim, more particularly, the Certificate dated 15/09/1961 issued in favour of Hiralal Narshi Varu, Grandfather of the petitioner, which shows him to be belonging to "Kumbhar" Community which is included in the list of Backward Class as specified by the Social Welfare Department of Kutch District of Gujarat State.

6. If the subsequent production of the documents supports the case of the petitioner, then it would be just and proper that the competent authority, respondent

no.1 herein, reconsiders the case of the petitioner on merits instead of this Court substituting the decision of the respondent authority.

7.1 Therefore, in the interest of all concerned, the matter is remanded to respondent no.1, Director of Tribal Welfare Department, for the purpose of reconsidering the case of the petitioner afresh, on the basis of the documents that may be produced by the petitioner and the other documents. Hence, the impugned order passed by respondent no.1 dated 02/08/2004, at Annexure-J to the petition, is quashed and set aside. However, it is made clear that the Court has not considered the matter on merits and has remanded the matter, only for the purpose of reconsideration on the basis of the documents that may be produced by the petitioner.

7.2 The respondent authority shall reconsider all the documents, including the documents that were placed before it earlier and may give its decision, without being influenced by the fact that the decision dated 26/06/2002 issued to the petitioner was cancelled. The petitioner shall not claim any benefits on the basis of the Certificate issued to the petitioner earlier till decision is taken by respondent no.1.

7.3 The petitioner is directed to approach respondent no.1 within a period of FOUR WEEKS from today. The Director of Tribal Welfare Department shall decide the case of the petitioner as aforesaid, within a period of FOUR MONTHS from the date when the petitioner approaches the respondent Director. With the above directions, the petition stands disposed of. Rule is made absolute to the aforesaid extent. A cost of Rs.2,500/- (Rupees Two thousand five hundred only) is imposed on the petitioner.

(K. S. Jhaveri, J.)

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